

Senate Bill No. 1685

Passed the Senate April 28, 2008

Secretary of the Senate

Passed the Assembly June 26, 2008

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 132304, 132320, 132322, 132324, 132328, 132330, 132332, and 132334 of, to amend the heading of Article 6 (commencing with Section 132320) of Chapter 2 of Division 12.7 of, and to add Sections 132321 and 132360.6 to, the Public Utilities Code, relating to planning.

LEGISLATIVE COUNSEL'S DIGEST

SB 1685, Kehoe. Regional comprehensive plan: San Diego County.

The San Diego Regional Transportation Consolidation Act provides for the consolidation of certain transportation responsibilities in a single consolidated agency, as specified. Existing law requires the consolidated agency to prepare and adopt a regional comprehensive plan that integrates land uses, transportation systems, infrastructure needs, and public investment strategies within a regional framework and in cooperation with member agencies and the public. Existing law authorizes the consolidated agency, acting as the San Diego County Regional Transportation Commission, to impose up to a 1% retail transactions and use tax, subject to voter approval, for various purposes, and to expand the use of tax revenues to certain transportation, natural habitat and open space, watershed management, and stormwater conveyance systems.

This bill would revise and expand the purposes for which revenues from the tax could be used to provide for implementation of the regional comprehensive plan, water quality improvement, beach sand replenishment projects, and various other projects and purposes. The bill would authorize the consolidated agency to transfer environmental mitigation or conservation property to a public agency or nonprofit corporation for management and monitoring, and would authorize the awarding of grants in that regard, subject to various auditing, reversion, and other related conditions. The bill would authorize the consolidated agency to increase the tax rate up to the maximum tax rate authorized under existing law, subject to voter approval. The bill would also provide for a transactions and use tax ordinance adopted under these

provisions to become operative on the first day of the calendar quarter commencing more than 110 days, rather than 120 days, after adoption of the ordinance. The bill would enact other related provisions.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The regional comprehensive plan proposed by the consolidated agency pursuant to the San Diego Regional Transportation Consolidation Act is intended to preserve and improve the quality of life in the San Diego region, to maximize mobility and transportation choices, and to conserve and protect natural resources.

(b) Alternative methods of funding and financing proposed infrastructure areas identified in the regional comprehensive plan prepared pursuant to Article 6.5 (commencing with Section 132360) of Chapter 3 of Division 12.7 of the Public Utilities Code are necessary in order to implement the plan, and to increase economic opportunities, contribute to economic development, conserve and protect the environment, and promote social equity within the San Diego region.

(c) Any extension, expansion, or increase of the transactions and use tax as a result of the amendments to Section 132320 of the Public Utilities Code made pursuant to this act shall apply prospectively to transactions and use taxes approved by the voters on or after January 1, 2009.

SEC. 2. Section 132304 of the Public Utilities Code is amended to read:

132304. (a) Any transactions and use tax ordinance adopted pursuant to this article shall be operative on the first day of the first calendar quarter commencing more than 110 days after adoption of the ordinance.

(b) Prior to the operative date of the ordinance, the commission shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of the ordinance.

SEC. 3. The heading of Article 6 (commencing with Section 132320) of Chapter 2 of Division 12.7 of the Public Utilities Code is amended to read:

Article 6. Extension, Expansion, or Increase of Transactions
and Use Tax

SEC. 4. Section 132320 of the Public Utilities Code is amended to read:

132320. For the purposes of this article, the following terms have the following meanings:

(a) To “expand” the transactions and use tax means to expand the purposes for which the revenue derived from the tax may be expended to include covering the costs of implementation of the regional comprehensive plan as referenced in Article 6.5 (commencing with Section 132360). These projects shall be limited to mitigation of impacts related to growth, maximizing the efficiency of regional transportation and transit systems, and funding of regional projects that integrate land uses, transportation systems, infrastructure needs, and public investment strategies, within a regional framework. Projects shall be limited to any or all of the following:

(1) Acquisition, management, maintenance, and monitoring of natural habitat and open space, and other projects that implement protection and preservation programs consistent with adopted natural community conservation plans and habitat conservation plans.

(2) Development and implementation of watershed management.

(3) Construction, repair, replacement, and maintenance of stormwater management and conveyance systems, and water quality improvement programs or projects.

(4) Construction, acquisition, maintenance, monitoring, and operation of beach sand replenishment projects.

(5) Funding of operations and maintenance costs for public transit projects that maximize mobility and transportation choices.

(b) To “extend” the transactions and use tax means to extend the imposition of the tax beyond any term stated in the tax ordinance originally imposing the tax.

(c) To “increase” the transactions and use tax means to increase the tax rate or the maximum tax rate authorized in the tax ordinance

originally imposing the tax to an amount that does not exceed the maximum tax rate authorized under Section 132307.

(d) The term “property” with regard to real property may include severable appurtenant real property rights such as easements, permits, and leases.

(e) The “purposes” for which revenue derived from the transactions and use tax may be expended, in addition to the other purposes listed in this article and in Article 5 (commencing with Section 132300), include funding one or more grants to provide funding mechanisms for purchases of property or long-term management and monitoring of projects authorized by this section. Recipients of those grants shall be required to meet the applicable conditions of Section 132321.

SEC. 5. Section 132321 is added to the Public Utilities Code, to read:

132321. (a) The commission may, upon terms, standards, and conditions approved by the commission, transfer environmental mitigation or conservation property to a public agency or to a nonprofit corporation that is qualified pursuant to Section 501(c)(3) of the Internal Revenue Code.

(1) As a condition to the transfer of property pursuant to this subdivision, the commission may enter into an agreement with the transferee to provide funding for the future maintenance and monitoring of the property consistent with any permit conditions and mitigation requirements imposed by state or federal law or conditions imposed by a state or federal agency. In determining the amount of the funding provided, the commission shall consider the costs of maintaining and monitoring the property and shall offset from the amount of those costs any benefit or value received by the transferee or the commission as a result of the transfer.

(2) The transferee to which the commission transfers the property shall assume the long-term responsibility for the future maintenance and monitoring of the property.

(3) (A) If the transferee fails to maintain and monitor the property in the manner required by law, by a permit, or as described in paragraph (1), or if the transferee is a nonprofit corporation that ceases to exist, the property shall automatically revert to the commission.

(B) If the property reverts to the commission pursuant to this paragraph, any remaining funds from the original transfer pursuant to paragraph (1) shall also revert to the commission.

(C) Any costs, including legal costs, associated with reversion of the property and funds pursuant to this paragraph shall be the responsibility of the transferee.

(4) Any documents conveying property in accordance with this section shall include a restriction limiting the use of the property solely for conservation purposes or environmental mitigation purposes in accordance with the conditions specified in paragraph (1).

(5) Documents conveying property in accordance with this section and documents related to a transfer or assignment of property under this section shall be filed with the county recorder's office in the county in which the property is located.

(6) The transferee shall not do any of the following:

(A) Transfer or assign the property to another entity without approval from the commission and compliance with this section.

(B) Transfer or use the property for any purpose other than as required by the agreement described in paragraph (1), and any relevant permit conditions and mitigation requirements.

(C) Subdivide the property.

(D) Secure loans or liens against the property.

(7) The commission shall conduct, or cause to be conducted, an audit of the performance of the transferee at least once every five years to ensure that the transferee is meeting its obligations pursuant to the terms of the agreement described in paragraph (1).

(b) The commission may, upon terms, standards, and conditions approved by the commission, award one or more grants to provide a funding mechanism for long-term management and monitoring of projects authorized by Section 132320 to a public agency or to a nonprofit corporation that is qualified pursuant to Section 501(c)(3) of the Internal Revenue Code. As a condition to the award of a grant pursuant to this subdivision, the commission may enter into an agreement with the grantee that contains the following terms:

(1) The grantee shall maintain accurate books, records, and accounts of all of its dealings, which shall be subject to an annual financial audit by an independent auditing firm approved by the commission. The grantee shall pay for the annual audit and provide

a copy of the audit results to the commission. The commission shall determine whether the grant fund expenditures are consistent with the terms of the agreement described in this subdivision. In addition, the commission may conduct or cause to be conducted a fiscal and compliance audit of the grantee.

(2) The commission shall conduct, or cause to be conducted, an audit of the performance of the grantee at least once every five years to ensure that the grantee is meeting its obligations pursuant to the terms of the agreement described in this subdivision.

(3) (A) If the grantee fails to perform its management or monitoring responsibilities in the manner required by law and in the manner required by the agreement described in this subdivision, or if a grantee that is a nonprofit corporation ceases to exist, any remaining funds derived from the grant pursuant to this subdivision shall revert to the commission.

(B) Any costs, including legal costs, associated with reversion of funds to the commission pursuant to this paragraph shall be the responsibility of the grantee.

SEC. 6. Section 132322 of the Public Utilities Code is amended to read:

132322. (a) An ordinance expanding, extending, or increasing the retail transactions and use tax imposed under this chapter shall be imposed by the commission and shall be applicable in the incorporated and unincorporated territory of the county, if the constitutionally required percentage of the electors voting on the measure vote to approve its imposition at a special election called for that purpose by the commission. The ordinance shall take effect on the day immediately following the day of the election at which the proposition is adopted.

(b) If at any time the voters do not approve the imposition of the expansion, extension, or increase of the transactions and use tax, the commission may, at any time thereafter, submit the same, or a different, measure to the voters in accordance with this article.

SEC. 7. Section 132324 of the Public Utilities Code is amended to read:

132324. (a) In the ordinance, the commission shall state the nature of the tax to be imposed, the tax rate or the maximum tax rate, and the purposes for which the revenue derived from the tax will be used. In connection with the extension or expansion of the

tax, the tax rate or the maximum tax rate may be increased from the tax rate or the maximum tax rate in effect at that time.

(b) If the tax is extended, the ordinance shall set forth the new term during which the tax will be imposed.

(c) If the tax is expanded, the ordinance shall contain an expenditure plan that includes the allocation of revenues for the expanded purposes.

SEC. 8. Section 132328 of the Public Utilities Code is amended to read:

132328. (a) Any ordinance extending or expanding, or both, the transactions and use tax shall be operative on the day immediately following the day of the election at which the proposition is adopted. Any increase in the tax rate or the maximum tax rate authorized by the ordinance shall be operative in accordance with Section 132304.

(b) If the ordinance expands, extends, or increases the transactions and use tax, the commission shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of the ordinance.

SEC. 9. Section 132330 of the Public Utilities Code is amended to read:

132330. Any action or proceeding wherein the validity of the adoption of the extension, expansion, or increase of the retail transactions and use tax, or the issuance of any bonds thereunder, or any of the proceedings in relation thereto is contested, questioned, or denied, shall be commenced within 60 days from the date of the election at which the ordinance is approved; otherwise, the bonds and all proceedings in relation thereto, including the adoption and approval of the ordinance and the levy and collection of the retail transactions and use tax, shall be held to be valid and in every respect legal and incontestable.

SEC. 10. Section 132332 of the Public Utilities Code is amended to read:

132332. The commission has no power to extend, expand, or increase any tax other than the transactions and use tax extended, expanded, or increased upon approval of the voters in accordance with this chapter.

SEC. 11. Section 132334 of the Public Utilities Code is amended to read:

132334. All provisions of Article 5 (commencing with Section 132300) relating to allocation of revenues, tax rates, and bonds apply to the expanded, extended, or increased transactions and use tax, except that the revenues derived from the expanded or increased tax may be used for the additional purposes described in subdivision (a) of Section 132320.

SEC. 12. Section 132360.6 is added to the Public Utilities Code, to read:

132360.6. The consolidated agency may use the authority for the retail transactions and use tax provided under Sections 132301 and 132302 to fund and finance infrastructure needs identified in the regional comprehensive plan developed in accordance with this article. Development of the proposal and expenditure plan shall be conducted using a public collaborative planning process that is consistent with Section 132360.1.

Approved _____, 2008

Governor